

1 COOLEY LLP  
2 PATRICK GUNN (172258)  
(pgunn@cooley.com)  
3 101 California Street  
5th Floor  
4 San Francisco, CA 94111-5800  
Telephone: (415) 693-2000  
Facsimile: (415) 693-2222

5 CLEARY GOTTLIEB STEEN & HAMILTON LLP  
6 JEFFREY ROSENTHAL (*pro hac vice*)  
(jrosenthal@cgsh.com)  
7 DARRYL STEIN (*pro hac vice*)  
(dstein@cgsh.com)  
8 One Liberty Plaza  
New York, NY 10006  
9 Telephone: (212) 225-2000  
Facsimile: (212) 225-3999

10 Attorneys for Respondents  
11 OPEN TEXT CORPORATION and  
OPEN TEXT Inc.

13 UNITED STATES DISTRICT COURT  
14 NORTHERN DISTRICT OF CALIFORNIA  
15 SAN FRANCISCO DIVISION

17 KEVIN COCHRANE, an individual,

Case No. 4:15-cv-01234-WHA

18 Petitioner,

**ANSWER TO FIRST AMENDED PETITION  
TO CONFIRM ARBITRATION AWARD**

19 v.

Courtroom: 8 – 19th Floor  
Judge: Hon. William Alsup

20 OPEN TEXT CORPORATION, a Canadian  
corporation and OPEN TEXT INC., a  
21 Delaware corporation,

Petition Filed: March 30, 2015

22 Respondents.

1 On behalf of Respondents Open Text Corporation and Open Text Inc. (collectively,  
2 “Respondents”), by and through their undersigned attorneys Cleary Gottlieb Steen & Hamilton  
3 LLP and Cooley LLP, hereby answer Petitioner Kevin Cochrane’s First Amended Petition to  
4 Confirm Arbitration Award and Enter Judgment Against Respondents Open Text Corporation and  
5 Open Text Inc., dated March 30, 2015 (the “Petition”), and state as follows:

## **THE PARTIES**

7 Respondents state that they lack knowledge or information sufficient to form a belief as to  
8 the truth of the allegations in paragraph 1, except that they admit that Petitioner is an individual.

9 Respondents admit the allegations in paragraph 2.

10 || Respondents admit the allegations in paragraph 3.

## **JURISDICTION AND VENUE**

12 Paragraph 4 states legal conclusions to which Respondents need not respond, except  
13 Respondents admit that the amount in controversy exceeds \$75,000.00. To the extent any further  
14 response to these allegations is necessary, Respondents deny them and refer to their responses in  
15 paragraphs 1, 2, and 3.

16 Paragraph 5 states legal conclusions to which Respondents need not respond. To the  
17 extent any response to those allegations is necessary, Respondents deny them, except admit that  
18 Open Text Inc. transacts business in this judicial district.

19 Paragraph 6 states legal conclusions to which Respondents need not respond. To the  
20 extent any response to those allegations is necessary, Respondents deny them and refer to the  
21 entirety of the Employment Agreement for its complete contents.

## INTRADISTRICT ASSIGNMENT

23 Paragraph 7 states legal conclusions to which Respondents need not respond. To the  
24 extent any response to those allegations is necessary, Respondents deny them.

## BACKGROUND OF ARBITRATED DISPUTE

26 Respondents deny the allegations in paragraph 8, except admit that that Petitioner reported  
27 to Respondents' Chief Executive Officer and aver that Petitioner was hired as Respondents' Chief  
28 Marketing Officer; that Petitioner served in that role from February 2013 until May 2, 2014; that

1 Petitioner executed an employment agreement dated December 5, 2012; that Petitioner had  
 2 certain management responsibilities; and that Open Text Inc. has an office in San Francisco,  
 3 California.

4 Paragraph 9 states legal conclusions to which Respondents need not respond. To the  
 5 extent any response to those allegations is necessary, Respondents deny them, except that  
 6 Respondents admit that Petitioner voluntarily decided to resign from Open Text.

7 Respondents deny the allegations in paragraph 10 and refer to the entirety of the  
 8 Employment Agreement for its complete contents.

9 Respondents deny the allegations in paragraph 11.

10 **THE ARBITRATION PROCEEDINGS**

11 Respondents state that they lack knowledge or information sufficient to form a belief as to  
 12 the truth of the allegations in paragraph 12, except admit that Petitioner sent a demand for  
 13 arbitration to counsel for Respondents on August 20, 2014.

14 Respondents state that they lack knowledge or information sufficient to form a belief as to  
 15 the truth of the allegations in paragraph 13, except admit that Respondents agreed to the  
 16 appointment of Mr. Wilburn as the sole arbitrator without waiving any jurisdictional objection.

17 Respondents admit the allegations in paragraph 14.

18 Respondents deny the allegations in paragraph 15, except admit that the Arbitrator issued  
 19 Order No. 1 and refer to the entirety of Order No. 1 for its complete contents and that  
 20 Respondents' submissions were made pursuant to Order No. 1.

21 Respondents admit the allegations in paragraph 16.

22 Respondents deny the allegations in paragraph 17.

23 Respondents deny the allegations in paragraph 18, except aver that the ICDR served the  
 24 Final Award on Respondents on March 10, 2015, admit that Exhibit A is a true and correct copy  
 25 of the Final Award and refer to the entirety of the Final Award for its complete contents.

26 Respondents deny the allegations in paragraph 19.

27

28

## **PRAAYER FOR RELIEF**

Answering Petitioner's prayer for relief, Respondents deny that Petitioner is entitled to relief against Respondents.

## **AFFIRMATIVE DEFENSES**

1. The Petition fails to state a claim upon which relief can be granted.
2. The Award may not be confirmed because the award must be vacated, modified, or corrected as prescribed in Section 10 of the Federal Arbitration Act. 9 U.S.C. § 10.

Dated: April 24, 2015

CLEARY GOTTLIEB STEEN & HAMILTON LLP  
JEFFREY ROSENTHAL (*pro hac vice*)  
DARRYL STEIN (*pro hac vice*)

COOLEY LLP  
PATRICK GUNN (172258)

*/s/ Patrick Gunn*

---

Patrick Gunn (172258)  
Attorneys for Respondents  
OPEN TEXT CORPORATION and  
OPEN TEXT Inc.